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J.H., Appellant)	
)	
and)	Docket No. 22-0062
)	Issued: April 21, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Omaha, NE, Employer)	
)	

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On October 21, 2021 appellant filed a timely appeal from a June 7, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the June 7, 2021 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty, as alleged.

On April 30, 2021 appellant, then a 52-year-old retired letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral carpal tunnel syndrome (CTS) due to factors of his federal employment, including tightly gripping mail with his left hand and fingering single pieces of mail with his right hand, 8 to 10 hours per day for the past 27 years. He noted that he first became aware of his condition and realized its relationship to his federal employment on December 9, 2020. On the reverse side of the claim form the employing establishment indicated that appellant retired on November 25, 2019.

In a statement dated February 15, 2021, appellant indicated that he began working for the employing establishment in 1992 as a casual carrier and eventually secured a permanent appointment. He related that he held his hands in the same position for 8 to 10 hours per day while performing his job duties. Prior to resigning, appellant noticed that he was dropping things with his right hand and experiencing numbness and pain in his right hand and arm at night. He further explained that he had been diagnosed with arthritis in his left thumb.

In a development letter dated May 3, 2021, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence required and attached a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's alleged injury, including comments from a knowledgeable supervisor regarding the accuracy of his allegations and an explanation of any areas of disagreement. It afforded both parties 30 days to submit the requested evidence.

In a May 3, 2021 response, G.E., an employing establishment supervisor, indicated that appellant did not work at a desk or with a computer, and that his job duties as a city carrier required that he case and pull down mail from a standard delivery case. He denied any knowledge of appellant's alleged injuries prior to receiving OWCP's May 3, 2021 development questionnaire. G.E. also attached a job description and a functional requirements list for appellant's city carrier position.

By decision dated June 7, 2021, OWCP denied appellant's occupational disease claim, finding that he had not established the factual component of his claim. It noted that he had not submitted sufficient evidence to substantiate his employment-related activities or clarify the impact of his other medical conditions in response to the development letter.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time

⁴ *Supra* note 1.

limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁸

The medical evidence required to establish causal relationship between a claimed condition and the accepted employment incident is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that an injury occurred in the performance of duty, as alleged.

The Board finds that appellant has not established the factual component of his claim as he failed to sufficiently describe the circumstances surrounding the alleged occupational factors, which he believed caused or contributed to his bilateral CTS. To establish a claim for compensation in an occupational disease claim, an employee must submit a statement, which identifies the factors of employment believed to have caused his or her condition.¹¹

⁵ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also* *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *See* *S.W.*, Docket No. 19-1609 (issued February 12, 2020); *A.M.*, Docket No. 19-1269 (issued December 4, 2019); *C.L.*, Docket No. 19-0042 (issued April 17, 2019); *D.M.*, Docket No. 18-0335 (issued June 18, 2018); *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

In his February 15, 2021 statement, appellant provided a vague description of occupational factors, including that his hands were in the same position for the majority of his workday. In its development letter, OWCP informed him that the evidence submitted was insufficient to establish that he suffered from an occupational disease as alleged. It requested that appellant complete an attached questionnaire describing in detail what employment factors he believed caused or contributed to his condition and additionally requested medical evidence establishing that his medical condition was causally related to employment factors. However, appellant did not respond or otherwise provide a detailed narrative statement describing the employment factors, which he believed contributed to his condition.¹² As noted, he bears the burden of submitting a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of a disease or condition.¹³

As appellant has not sufficiently described the employment factors alleged to have caused his injury, the Board finds that he has not met his burden of proof to establish that an injury occurred in the performance of duty, as alleged.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that an injury occurred in the performance of duty, as alleged.

¹² *Id.*

¹³ *Id.*; *Victor J. Woodhams*, *supra* note 10.

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board